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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,148	02/20/2004	Craig M. Ruecker	2997-19-1	5350
22442	7590	03/12/2007		
SHERIDAN ROSS PC			EXAMINER	
1560 BROADWAY			DAVIS, RUTH A	
SUITE 1200				
DENVER, CO 80202			ART UNIT	PAPER NUMBER
			1651	
			MAIL DATE	DELIVERY MODE
			03/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/784,148	<b>Applicant(s)</b> RUECKER ET AL.
	<b>Examiner</b> Ruth A. Davis	<b>Art Unit</b> 1651

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
  - (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  They raise the issue of new matter (see NOTE below);
  - (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: 57.

Claim(s) rejected: 35-37 and 47-56.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13.  Other: See Continuation Sheet.

Ruth A. Davis  
Primary Examiner  
Art Unit: 1651

Continuation of 11. does NOT place the application in condition for allowance because: Gudin specifically teaches the process wherein the phases are separated into multiple layers. Gudin teaches the layers may separated into 2 or 3 layers whereby the lipid can be purified therefrom (col.4 line 10-30). While Gudin may not expressly teach the lipids are emulsified, the steps are the same, thus the lipids must also be present in the phase separated layer. Regarding Wagner, the reference specifically teaches adding a base to the culture broth when obtaining lipids from the microorganisms (col.5 line 48-54). While the reference may not specifically disclose the base dissolves proteins, such an action is intrinsic to the method since the method steps are the same. Regarding applicant's assertion that Wagner is recovering proteins, it is reiterated that Wagner specifically identifies adding a base to increase the recovery of lipids (col.5 line 48-54).

Continuation of 13. Other: It is noted that applicant has proposed new claim 58, however the claim appears to be incomplete. In addition, pursuant to applicant's request for a reference which evidences the optimization of the numbers of washes, applicant is directed to US 3089821, col.1 which discloses phase separation of lipids from microorganisms by way of multiple washes.